SUPREME COURT, U. S.

AUG 25 1969

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 400

WALTER G. FOWLER, MARGARET FOWLER CLARK, and BRAXTON FOWLER
Petitioners

v.

CITY OF CHARLOTTESVILLE, VIRGINIA, and CHARLOTTESVILLE REDEVELOPMENT and HOUSING AUTHORITY
Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE CORPORATION COURT OF THE CITY OF CHARLOTTESVILLE, VIRGINIA

BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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OPINIONS BELOW

Though the Corporation Court of the City of Charlottesville, Virginia, did not render a formal written opinion, the reasons for its decision were set forth in a lengthy

order. This order, which is attached hereto as "Appendix A", is very similar to a memorandum opinion except for its style and can be treated as such.

The order of the Supreme Court of Appeals of Virginia, dated April 29, 1969, and attached to this brief as "Appendix B", had the effect of affirming the Corporation Court's judgment.

JURISDICTION

Contrary to contentions made by petitioners, respondents submit that jurisdiction does not exist in the instant case, under 28 U.S.C. §1257 or any other provision of law.

Petitioners have failed to raise a federal question in the state courts and they cannot claim successfully that any such question was preserved or decided below. Moreover, the decision to which they are objecting is based on independent and adequate state grounds. And finally, the due process argument now made by petitioners falls far short of presenting a substantial federal question.

In essence, petitioners are asking this Court to sit as a fact finding body to review the physical and geographic conditions related to an urban renewal project located in Charlottesville, Virginia. The Supreme Court of the United States, respondents respectfully submit, lacks jurisdiction to perform such a function in the present case.

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

The only federal constitutional provision involved is the "due process" portion of the Fourteenth Amendment set forth by the Petitioners.

Also involved is a portion of the Virginia Code, § 36-49, which portion is as follows:

"§ 36-49. UNDERTAKINGS CONSTITUTING REDEVELOPMENT PROJECTS. — Any authority now or hereafter established, in addition to other powers granted by this or any law, is specifically empowered to carry out any work or undertaking (hereafter called a 'redevelopment project'):

(1) To acquire blighted or deteriorated areas, which are hereby defined as areas (including slum areas) with buildings or improvements which, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement of design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or obsolete layout, or any combination of these or other factors, are detrimental to the safety, health, morals or welfare of the community;

(2) To acquire other real property for the purpose of removing, preventing, or reducing blight, blighting factors or the cause of blight;

(3) To acquire real property where the condition of the title, the diverse ownership of the real property to be assembled, the street or lot layouts, or other conditions prevent a proper development of the property and where the acquisition of the area by the authority is necessary to carry out a development plan; ....."

QUESTIONS PRESENTED

1. Was any Fourteenth Amendment "due process" issue duly raised or decided in the courts below?
2. Does the judgment below rest on independent and adequate state grounds and thereby preclude adjudication by this Court of the federal question now presented for review?
3. When petitioners seek judicial review of a legislative

finding that their land is blighted and that the land is necessary for an existing urban renewal project, are they presenting a federal question of any substance?

STATEMENT OF THE CASE

In 1958, the Charlottesville Redevelopment and Housing Authority initiated the Vinegar Hill Urban Renewal project on a 20 acre site on the north side of West Main Street in Charlottesville, Virginia. In 1964, the Authority began considering amending the plan by revising the boundaries of the project to include .7 acres on the south side of West Main Street which appeared blighted and necessary to the success of the project. A consulting firm was employed December 1, 1964, to study the area and prepare the amendment to the urban renewal plan.

In February, 1965, the firm submitted to the Authority its report (Defendants' Exhibit No. 5 in the trial court). In the report, it was concluded that the .7 acres contained eight parcels of land, seven of which were blighted and that the inclusion of the .7 acres was necessary to achieve the objectives of the project. The building on one of the parcels of land was removed subsequent to the report. Of the seven remaining buildings, six were considered blighted. Side yards, rear yards, and parking areas constituted more than half of the .7 acres but did not prevent the individual parcels from being blighted. The Authority, on September 8, 1966, by resolution, determined that the .7 acres, as a whole, was blighted and amended the plan to include the .7 acres.

After a public hearing on June 5, 1967, held to consider the amendment, at which petitioners were present, City Council, by resolution, concurred in the finding of blight and approved the amendment.

This suit was commenced by petitioners in the Corpo-

ration Court of the City of Charlottesville, Virginia, seeking an injunction to prevent the acquisition of .7 acres by the Authority by the exercise of the power of eminent domain. The Corporation Court denied the injunction. Petitioners then sought a writ of error from the Supreme Court of Appeals of Virginia which was refused.

ARGUMENT

1. NOT ONCE IN EITHER THE STATE TRIAL COURT OR BEFORE THE SUPREME COURT OF APPEALS OF VIRGINIA DID PETITIONERS ADEQUATELY PRESENT A FEDERAL DUE PROCESS ARGUMENT. HAVING FAILED TO DO SO, THEY HAVE WAIVED THEIR RIGHTS TO MAKE SUCH A CONTENTION BEFORE THIS COURT.

Petitioners attempt to demonstrate how they raised a due process argument in the courts below. They cite paragraph 7 of their Amended Bill of Complaint, which paragraph reads:

> "7. That the proposed Redevelopment project does not constitute a valid undertaking within the meaning of Sections 36-1 through 36-55, Code of Virginia (1950), as amended, and that a judicial determination of the facts will demonstrate that conditions in the said area as a whole are not detrimental to the safety, health, morals or general welfare of the community;"

No matter how many times one might examine the foregoing language, he will not succeed in discovering a federal question. Not even a slight hint is found within paragraph 7 that petitioners are claiming a violation of

the due process clause. This paragraph is nothing more than an obvious attempt to allege that the land of petitioners is not, under state law, subject to taking for an urban renewal project.

Petitioners also point to pages 261, 263, 265-66 and 520 of the transcript in an effort to show the manner in which they raised a federal question at trial. But these pages do not give evidence of any properly raised federal question. Instead, they only serve to confirm that the Virginia trial court was never asked to give serious consideration to a Fourteenth Amendment due process argument.

Though not mentioned in the petition for a writ of certiorari, the pleadings filed by petitioners in the trial court make various allegations that action by the Authority was "arbitrary and unreasonable". This language, however, should not be construed as some vague presentation of a due process argument. Such references have evolved in Virginia in similar cases because of the limited scope of judicial review. As the Court indicated in *Runnels* v. *Housing Authority*, 207 *Va.* 407, 410, 149 *S.E.2d* 882, 885 (1966) when certain landowners also sought to prevent acquisition of properties with an urban renewal project ". . . legislative findings will not be disturbed unless they are arbitrary and unreasonable." This principle of state law exists because the legislative findings of the Authority and the City Council are clothed with a presumption of validity. The words "arbitrary and unreasonable", therefore, have no relation to any alleged federal due process question.

Because no federal question was raised in the trial court, respondents submit that such a question cannot be presented at this stage. Rule of Court 1:8 of the Supreme Court of Appeals of Virginia requires that all ob-

jections or motions which need a ruling or judgment of the trial court be stated with reasonable certainty. Unless an objection is so stated, such objection will not be considered by the Supreme Court of Appeals. See, e.g., *Harlow* v. *Commonwealth*, 195 *Va.* 269, 77 *S.E.2d* 851 (1953). In light of the foregoing Virginia rule, petitioners' failure to raise their federal question in the trial court becomes fatal to the jurisdiction of this Court. *Edelman* v. *California*, 344 *U.S.* 357 (1953); *Mutual Life Ins. Co.* v. *McGrew*, 188 *U.S.* 291 (1903). See also, *Bailey* v. *Anderson*, 326 *U.S.* 203 (1945) where this proposition was used to defeat jurisdiction in a case arising in Virginia.

As if failing to raise a federal question in the trial court were not alone sufficient to defeat jurisdiction here, in this Court, petitioners compounded their earlier mistake when attempting to appeal to Virginia's highest court. The "Notice of Appeal and Assignments of Error" filed by petitioners and attached hereto as "Appendix C" contains not one word, either express or implied, about the United States Constitution or violation of rights under the due process clause. Thus, even if petitioners had properly raised the question with some precision before the trial judge, under the Rules of the Supreme Court of Appeals of Virginia (Rule 5:1 §4, Volume 2, Code of Virginia, 1950), that highest state court could not and did not consider such question because the question was not assigned as an error. *Farrow* v. *Commonwealth*, 197 *Va.* 353, 89 *S.E.2d* 312 (1955); *Harlow* v. *Commonwealth*, 195 *Va.* 269, 77 *S.E.2d* 851 (1953). This, of course, also precludes review before the United States Supreme Court. *Beck* v. *Washington*, 369 *U.S.* 541, 549-553 (1962); *Capital City Dairy Co.* v. *Ohio*, 183 *U.S.* 238 (1902).

2. EVEN IF PETITIONERS WERE ABLE TO SHOW THAT THE CONDITION OF THEIR PROPERTIES IS SUCH THAT IT IS NOT "BLIGHTED" UNDER VIRGINIA LAW AND THAT, SOMEHOW, A LEGISLATIVE FINDING TO THE CONTRARY ESTABLISHES A FEDERAL QUESTION, THEY ARE NOT ENTITLED TO REVIEW IN THIS COURT BECAUSE THE DECISION BELOW ALSO RESTS ON INDEPENDENT AND ADEQUATE STATE GROUNDS WHICH SUPPORT DENIAL OF THE INJUNCTIVE RELIEF SOUGHT.

For many years, it has been well established that, if a state court decision is based on a nonfederal ground which is adequate to support the result reached, such an independent state ground will suffice to defeat jurisdiction of this Court. *Herb* v. *Pitcairn*, 324 *U.S.* 117 (1945); *Fox Film Corp.* v. *Muller*, 296 *U.S.* 207 (1935); *Murdock* v. *City of Memphis*, 87 *U.S.* (20 Wall) 590 (1875). This important limitation on Supreme Court review was discussed at some length by Justice Jackson in *Herb* v. *Pitcairn*, supra, at pages 126-27 where he said:

> "This Court has adhered to the principle that it will not review judgments of state courts that rest on adequate and independent state grounds. . . . The reason is so obvious that it has rarely been thought to warrant statement. It is found in the partitioning of power between the state and federal judicial systems and in the limitations of our own jurisdiction. Our only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. *And our power is to correct wrong judgments, not to revise opinions. We are not*

permitted to render advisory opinions, and if the same judgment would be rendered by the state court after we corrected its views of federal laws, our review would amount to nothing more than an advisory opinion.

(emphasis supplied)

Respondents contend that regardless of the outcome of any federal due process claim now made by petitioners, the result of the judgment below will remain unchanged. Section 36-49(2) of the Code of Virginia, 1950, gives local housing authorities power to acquire real property even when it is not blighted if the acquisition is to prevent blight or blighting factors or the cause of blight. Subparagraph 3 of the same state statute, §36-49, goes even further. It gives a housing authority power to acquire property:

". . . where the condition of the title, the diverse ownership of the real property to be assembled, the street or lot layouts, or other conditions prevent a proper development of the property and *where the acquisition of the area by the authority is necessary to carry out a redevelopment plan;*" (emphasis supplied)

Examination of the record in this case demonstrates readily enough that petitioners' land, a part of the .7 acres in question, was added to the twenty (20) acre Vinegar Hill project on the opposite side of West Main Street because the Charlottesville Redevelopment and Housing Authority exercised authority granted to it under this last quoted statutory language, because the .7 acre tract was deemed necessary to carry out the redevelopment plan. The Application for Loan and Grant, which application included the project area report (Defendants'

Exhibit No. 5 in the trial court) states at page 11 of said report under Summary of Condition 2B:

> "This property is so located within the project that its acquisition and clearance is mandatory if the objectives of the Redevelopment Plan for this area are to be realized."

According to the evidence before the Housing Authority, the urban renewal plan should have been amended so as to include petitioners' property in order to:

1. Remove a pocket of blight directly adjacent to the primary disposition parcel.
2. To enhance and upgrade one of the main approaches to the Central Business District from the west.
3. To provide for possible expansion of existing retail outlets as well as off-street parking to serve such outlets.

(Page 1 of the Project Area Report, Defendants' Exhibit No. 5 in the trial court).

The last two reasons set forth above leave no real doubt that the Authority grounded its legislative decision on more than a finding of blight. The trial judge recognized this in his final order (Appendix A, page A-4 subparagraph (c)) and, accordingly, made the Authority's determination that petitioners' land was needed for the urban renewal project one of three alternative grounds for his decision. Such an alternative ground, arising as it does from a state statute, is certainly nonfederal in nature and, therefore, will defeat jurisdiction in this Court regardless of the merits of any separate federal claim related to blight. See, e.g., *Fox Film Corp.* v. *Muller*, 296 *U.S.* 207, 219 (1935) where a writ was dismissed for want of jurisdiction even though it was assumed the federal question was one of merit.

There is still another independent and adequate state

ground which should defeat federal review here. By omitting any alleged violation of rights under the federal constitution in their assignments of error, petitioners have not complied with state procedural rules, particularly Rule 5:1 §4, Rules of Court of the Supreme Court of Appeals of Virginia. Noncompliance with such local laws can thus be an adequate state ground for the decision below. See, e.g., *Edelman* v. *California*, 344 *U.S.* 357, 358 (1953). As previously stated, the Rules of the Supreme Court of Appeals of Virginia require that all alleged errors, including those related to the Fourteenth Amendment due process clause, be specifically assigned as errors and filed with the highest state court. Failure to assign any such errors before the Supreme Court of Appeals of Virginia will result in the failure of that court to consider those errors not mentioned in the assignment. *Farrow* v. *Commonwealth, supra; Harlow* v. *Commonwealth, supra.* And a state procedural ground of this nature can be equal in importance to a state substantive ground in precluding review of federal questions by this Court. *Beck* v. *Washington*, 369 *U.S.* 541, 549-553 (1962).

3. BECAUSE THE DUE PROCESS ARGUMENT NOW MADE BY PETITIONERS IS ONE WHICH IS NOTHING MORE THAN A FORMAL DECLARATION AND IS WHOLLY WITHOUT FOUNDATION, IT SHOULD NOT BE HEARD BY THIS COURT. ON THE CONTRARY, THE PETITION SHOULD BE DISMISSED FOR WANT OF A SUBSTANTIAL FEDERAL QUESTION.

Petitioners come before this Court making two arguments, both of which, when summarized, amount to an assertion that the evidence before the Charlottesville Redevelopment and Housing Authority was insufficient to

support a finding that the .7 acres, as a whole, was blighted. Such a charge is without basis in fact. The overwhelming weight of evidence indicates that the opposite is true. (Tr. 257-280, 310-342). Furthermore, in an urban renewal case where the public purpose is established beyond gainsay, it is not for individuals, like petitioners, and it is not for the courts, to weigh their conception of the facts against the judgment of housing authorities and other legislative bodies. Absent a showing of bad faith or fraud, once the findings of blight or necessity have been made, once the public interest has been declared, such declaration is in terms "well-nigh conclusive." *Berman* v. *Parker*, 348 *U.S.* 26, 32 (1954).

Decisions of the Supreme Court leave no room for real controversy on this question and arguments like those made by petitioners have been consistently rejected. See, e.g., *Burt* v. *City of Pittsburgh*, 340 *U.S.* 802 (1950); *Grisanti* v. *City of Cleveland*, 371 *U.S.* 68 (1962); *Starr* v. *Nashville Housing Authority*, 354 U.S. 916 (1957). For lower court decisions with pertinent factual analogies, see *Grisanti* v. *City of Cleveland*, 181 *N.E.2d* 299 (1962); *Eikenbary* v. *City of Dayton*, 210 *N.E.2d* 402 (1964) (urban renewal project where boundary amended to include additional 12.5 acres).

Since the facts and the last cited decisions of this Court effectively foreclose the due process arguments now made by petitioners, there is no federal question to support jurisdiction. The petition should be dismissed.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,
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Of Counsel.

"APPENDIX A"

VIRGINIA: AT A CORPORATION COURT OF THE CITY OF CHARLOTTESVILLE, ON THE CHANCERY SIDE THEREOF, HELD ON FRIDAY, SEPTEMBER 13th, 1968.

Present: Honorable GEORGE M. COLES, *Judge*

WALTER FOWLER, ET AL.
V.
CITY OF CHARLOTTESVILLE, ET AL.
} ORDER

This cause came on this day to be heard on March 26 through March 30, 1968, and on the papers formerly filed in this proceeding.

Whereupon, the complainants produced evidence ore tenus, at the conclusion of which the respondents moved to strike the evidence of the complainants as insufficient to support the relief prayed for in the bill. The Court, after hearing arguments upon the motion, overruled the same, to which action the respondents, by counsel, excepted.

Whereupon, the respondents produced evidence ore tenus.

Whereupon, counsel for complainants and counsel for respondents argued the points at issue.

Whereupon, the Court noted that the bill of complaint referred only to the 7/10ths of an acre on the south side of Main Street, and, in overruling point (2) of the demurrer, it had indicated that the presence of blight in the 7/10ths of an acre was the issue in this case. The Court, after hearing the evidence and arguments, was of the opinion that the condition of the 20 acres, more or less, on the north side of Main Street constituting the remainder of the project area, was also material to this case. Consequently, the Court indicated that the complainants

should be given an opportunity to produce evidence with respect to the 20 acres.

Whereupon, on May 29, 1968, counsel for complainants indicated that the only evidence they wished to produce with respect to the 20 acres could be presented by stipulation. Counsel for complainants presented a stipulation which reads as follows:

> "In April, 1965 demolition of the improvements located on the North side of Main Street on the said Twenty (20) acre tract within the Vinegar Hill Project had been completed. The entire area was on that date vacant and has been vacant ever since, and the land did not contain any buildings anytime after April, 1965."

Counsel for the respondents agreed to the stipulation.

The complainants brought to the Trial Court's attention the argument that Section 14a of the Charter of the City of Charlottesville requires a referendum on this project, since the Court has now included in its deliberation a consideration of the condition of the original project area of the 20 acre tract.

The complainants thereupon moved the Court that judgment be rendered in their favor on the ground that no referendum had been conducted with respect to the entire project area composed of the 20 acre tract plus the 7/10ths of an acre and that such referendum is required by Section 14a of the Charter of the City of Charlottesville.

Whereupon, it appearing to the Court as follows:

1. The primary responsibility for determining blight is on Charlottesville Redevelopment and Housing Authority;

2. The Charlottesville Redevelopment and Housing Authority has made a finding that the entire project area,

including the 7/10ths of an acre, was blighted, and the action of Charlottesville Redevelopment and Housing Authority is clothed with a presumption of validity. For the complainants to prevail in this cause, they must show by clear and convincing evidence that the action of Charlottesville Redevelopment and Housing Authority was arbitrary and unreasonable;

3. There are at least three findings, any one of which if reasonable under the circumstances, could have served as justification for the Authority to include the 7/10ths of an acre on the south side of Main Street within the Vinegar Hill project area. The Authority, by resolution dated September 8, 1966, approving the Application for Loan and Grant dated September 8, 1966, which application contained the project area report (respondent's "Exhibit 5"), made all three findings, namely: (1) that the 7/10ths of an acre, standing alone, was blighted and deteriorated; (2) that the entire 21.4 acre project, including the 7/10ths of an acre on the south side of Main Street, was 78.1% blighted and deteriorated; and (3) that, in effect, the 7/10ths of an acre was necessary to carry out the redevelopment project.

a. Complainants have failed to show that the Authority's finding that the 7/10ths of an acre was blighted was arbitrary and unreasonable. In September of 1966, the Authority made its decision based on reports prepared in February, 1965. Although there were some changes in the physical condition of the 7/10ths of an acre, there was no undue delay between the preparation of these reports and the Authority's decision. The Court is of the opinion that the complainants have failed to carry the burden of showing that the 7/10ths of an acre was not, in fact, blighted on September 8, 1966;

b. The Authority, by its resolution dated September 8, 1966, determined that the entire 21.4 acre project area,

including the 7/10ths of an acre, was 78.1% blighted, which finding was based on reports dated 1960 and February, 1965. The complainants have failed to carry their burden of showing that this finding of the Authority was arbitrary and unreasonable; and

c. It was decided by the Authority to include the 7/10ths of an acre in its project boundary because the Authority decided that this 7/10ths of an acre was necessary to carry out the purpose of the project, namely: to "remove, prevent or reduce blight". The complainants have failed to carry the burden of showing that this action of the Authority was in bad faith, arbitrary, and unreasonable.

4. Section 14a of the Charter of the City of Charlottesville specifically applied to public housing projects and, since this is an urban renewal project, it has no application here.

THEREFORE, it is ADJUDGED, ORDERED and DECREED that the relief sought by the complainants be and the same is hereby denied. To which action, the complainants except.

Whereupon, it appearing to the Court that the complainants have indicated an intention to petition the Supreme Court of Appeals of Virginia for a writ of error and supersedeas to this decree. On motion of said complainants, by counsel, it is ORDERED that the respondents be enjoined from proceeding to acquire the property of the complainants until such time as the Supreme Court acts on the petition for a writ of error, but, before said injunction shall be effective, complainants are hereby required to execute, within thirty (30) days from the date of this order, a suspension bond with approved security before the Clerk of this Court in the penalty of $2,500.00 to secure to the respondents all of the damages to the respondents resulting from the delay caused by the injunc-

tion, and an appeal bond in the penalty of $1,000.00 with security approved by the Clerk of this Court conditioned and payable as the law directs and to the provisions of Title 8, Section 477 of the Code of Virginia, as amended.

* * * *

S/GEORGE M. COLES, *Judge*

A Copy, Teste:—
CARL E. HENNRICH, *Clerk*

"APPENDIX B"

VIRGINIA: IN THE SUPREME COURT OF APPEALS HELD AT THE SUPREME COURT OF APPEALS BUILDING IN THE CITY OF RICHMOND ON *Tuesday* THE *29*TH DAY OF *April, 1969.*

The petition of Walter Fowler, Braxton Fowler and Margaret F. Clark for an appeal from a decree entered by the Corporation Court of the City of Charlottesville on the 13th day of September, 1968, in a certain chancery cause then therein depending, wherein the said petitioners were plaintiffs and the City of Charlottesville and another were defendants, having been maturely considered and a transcript of the record of the decree aforesaid seen and inspected, the court being of opinion that there is no reversible error in the decree appealed from, doth reject said petition, and refuse said appeal, the effect of which is to affirm the decree of the said corporation court.

A Copy,
Teste:—
HOWARD G. TURNER,
Clerk
By ALLEN L. LUCY
Deputy Clerk

"APPENDIX C"

VIRGINIA: IN THE CORPORATION COURT OF THE CITY OF CHARLOTTESVILLE

WALTER FOWLER
MARGARET F. CLARK
BRAXTON FOWLER
Complainants

V

CITY OF CHARLOTTESVILLE
c/o Burkett A. Rennolds,
Mayor
City Hall
Charlottesville, Virginia

and

THE CHARLOTTESVILLE
REDEVELOPMENT AND
HOUSING AUTHORITY
c/o A. E. Arrington
Executive Director
Charlottesville Redevelopment and Housing Authority
Charlottesville, Virginia
Defendants

NOTICE OF APPEAL AND ASSIGNMENT OF ERROR

The complainants, Walter Fowler, Margaret F. Clark, Braxton Fowler and Walter Verling, do hereby give Notice of Appeal from the final judgment decree entered in this suit on the *13* day of *September,* 1968 pursuant to Section 4, Rule 5:1 of the Rules of the Supreme Court of Appeals of Virginia.

The following are errors assigned:

(1) That the Court erred in failing to make a finding

that the Vinegar Hill Project Area was not blighted or deteriorated within the meaning of Virginia Code Section 36-49.

(2) That the Court erred in failing to hold that the conditions which existed in the Project Area were not detrimental to the safety, health, morals or welfare of the Community.

(3) That the Court erred in finding that the actions of the Charlottesville Redevelopment Authority and the City of Charlottesville were not arbitrarily and unreasonable as to the proposed taking of the seven-tenths (7/10) of an acre on Main Street.

(4) That the Court erred in finding that the survey on which the Authority based its findings were not too remote from the time the Redevelopment Authority and the City Council acted.

(5) That the Court erred in finding that Section 14a of the City Code of Charlottesville did not apply to the redevelopment area.

(6) That the Court erred in denying the complainants the right to produce evidence as to the original twenty (20) acre tract of the redevelopment area during the Trial and further erred in ruling two weeks after all evidence were in and all parties had rested that the said twenty (20) acre tract should be considered in the evidence.

(7) That the Court erred in finding that the Charlottesville City Council had not exceeded its authority in determining that the said area was a slum, blighted or deteriorated.

Respectfully Submitted,
WALTER FOWLER
MARGARET F. CLARK
BRAXTON FOWLER
By Counsel

Erwin S. Solomon
Counsel
Hot Springs, Virginia 24445

I hereby certify that a copy of the foregoing Notice of Appeal and Assignment of Error was mailed this 18th day of October, 1968 to David J. Wood, Jr., 230 Court Square, Charlottesville, Virginia and W. Clyde Gouldman, City Attorney, Charlottesville, Virginia, attorneys for the defendants.

Erwin S. Solomon